



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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AUG 6 1997

OFFICE OF  
AIR AND RADIATION

Lindsay A. Lovejoy, Jr.  
Assistant Attorney General  
Office of the Attorney General of New Mexico  
P.O. Drawer 1508  
Santa Fe, New Mexico 87504-1508

Dear Lindsay:

This letter responds to your <sup>July</sup> June 14, 1997 letter regarding the U.S. Department of Energy's (DOE) Compliance Certification Application (CCA) for the Waste Isolation Pilot Plant (WIPP) and the U.S. Environmental Protection Agency's (EPA) certification rulemaking process. I also want to clarify for you the ~~July~~ <sup>June</sup> 17, 1997 letter, from Frank Marcinowski, sent in response to your letter of June 3, 1997, regarding EPA's rationale for selecting certain parameter values for use in the WIPP performance assessment calculations.

As stated in Mr. Marcinowski's June 17 letter, as well as in numerous other letters, EPA has provided, and will continue to provide, ample opportunities for public comment on its WIPP-related rulemakings. Not only has EPA has taken all necessary steps to fully comply with the pertinent regulatory requirements, the Agency has exceeded those requirements in response to the public's special interest in this important rulemaking.

I want to reiterate Mr. Marcinowski's remarks that the bases for all decisions leading to a proposed certification decision (including the scientific data to which you refer in your letter) will be fully documented in EPA's public docket (A-93-02) upon publication of a proposed rule regarding whether DOE has demonstrated that WIPP complies with EPA's radioactive waste



disposal regulations. This documentation will include references, such as files found in Sandia National Laboratory's (Sandia) Records Center. While the Records Center is operated by Sandia, EPA placed access instructions for obtaining files from the Records Center in our docket in order to assist the public. In addition, EPA has contacted Sandia about your procedural request regarding EPA's placing in the docket a list of documents and files that have been added to the Records Center since October 1996, as well as your request to place a memo in our docket when any new items are added to the Records Center. Sandia has informed my staff that these types of requests can be addressed; therefore, I recommend that you contact Sandia directly regarding your request for Records Center updates.

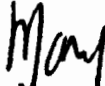
Consistent with the Agency's obligations under the WIPP Land Withdrawal Act and Administrative Procedure Act, your office, as well as other interested parties, will have an opportunity to comment on all materials included in the docket upon publication of a proposed certification decision. Thus, the docket will include information and reference lists (as necessary) relating to each of the regulatory determinations that EPA must make under the compliance certification criteria, including parameter values, radionuclide solubility, and passive institutional control credit, as you requested in your June 3 and July 14 letters. EPA will ensure that any compliance certification determination is fully supported by the public record.

Under no circumstances has EPA made, nor will EPA make, any binding decisions outside of the public process. Moreover, no interim staff decisions are binding until promulgation of a final rule signed by the Administrator. Any statements EPA staff could make at this time concerning technical issues would be preliminary. Therefore, it would be premature to provide the type of information you request prior to full Agency review of the proposed certification decision and technical support that will accompany the proposal.

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EPA has consistently demonstrated in the past that we are willing to meet with your office and other interested parties to discuss the Agency's WIPP certification decision process. As expressed in the August 6, 1997 letter from Fred Hansen, Deputy Administrator, to Tom Udall, New Mexico Attorney General, EPA will schedule a meeting with your office, at your earliest convenience, so we can provide additional information identifying the various issues that have arisen as the Agency continues its compliance evaluation of the WIPP. If you are interested in arranging such a meeting, please call me at (202) 233-9310. If you require further clarification regarding EPA's legal obligations with respect to our public participation practices in the ongoing rulemaking activities, please contact our legal counsel, Keith A. Matthews, at (202) 260-7606.

Sincerely,



Mary Kruger, Acting Director  
WIPP Center